U.S. Department of Labor

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**Issue date: 09Aug2001**

Case No. 2000-LHC-03236
OWCP No. 1-148700

In the Matter of

MARSHA SARACCO,

Claimant,

v.

ELECTRIC BOAT CORP.,

Employer,

and

NATIONAL EMPLOYERS CO.,

Carrier,

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,

Party-in-Interest.

APPEARANCES[1]:

For the Claimant:
Robert Chisolm, Esq.,
Erin P. Garret, Esq.,
1 Turks Head Place
Providence, Rhode Island

For the Employer:
Lauren Motola-Davis, Esq.,

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[1]The Director, OWCP, was not represented by counsel at the hearing.

1 Providence, Washington Plaza
Providence, Rhode Island

BEFORE: DANIEL J. ROKETENETZ
Administrative Law Judge

**DECISION AND ORDER - AWARD OF BENEFITS**

This case arises from a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, *et seq.* (herein after referred to as either LHWCA or the Act).

On September 1, 2000, this case was referred to the Office of Administrative Law Judges by the Office of Workers' Compensation Programs for a hearing. Following proper notice to all parties, a formal hearing in this matter was held before the undersigned on March 29, 2001, in New London, Connecticut. All parties were afforded full opportunity to present evidence as provided in the Act and the regulations issued thereunder and to submit post-hearing briefs.

The findings of fact and conclusions of law set forth in this decision and order are based on my analysis of the entire record. Each exhibit and argument of the parties, although perhaps not mentioned specifically, has been carefully reviewed and thoughtfully considered. References to ALJX 1 through 5, EX. 1 through 19, and CX. 1 through 5 pertain to the exhibits admitted into the record and offered by the Administrative Law Judge, Employer, and the Claimant, respectively. The transcript of the hearing is cited as Tr. followed by page number.

**STIPULATIONS:**

At the hearing, the parties submitted the following stipulations (ALJX 3).

1. The Act 33 U.S.C. §901 *et seq.*, applies to this claim;

2. The Claimant and the Employer were in an employee-employer relationship at the time of the injury;

3. The Employer was advised or learned of the accident/injury on December 14, 1999;

4. The Claimant gave the Employer timely notice of her injury;

5. The Employer filed a first report of the accident/injury on December 27, 1999;

6. The Claimant filed a claim for compensation on December 29, 1999;

7. The Claimant's claim was filed in a timely fashion;

8. The Employer filed timely notice of contraversion of this claim; and,

9. The Claimant's average weekly wage is $835.00.

**Issues:**

The issues in this case are:

1. Whether the work incident of December 14, 1999, and or/ whether the cumulative stress of the Claimant's general working conditions caused or aggravated a psychological injury arising out of and in the course of the Claimant's employment with the Employer; and,

2. The nature, extent, and duration of the Claimant's disability.

Based upon a thorough analysis of the entire record in this case, with due consideration accorded to the arguments of the parties, applicable statutory provisions, regulations, and relevant case law, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Lay Evidence:

In this claim for benefits, the Claimant seeks temporary total disability and medical benefits for a psychiatric injury she alleges was either caused by or aggravated by severe job-related stress. She asserts that specific events occurring during the last year of her employment with Electric Boat Corp., as well as the cumulative circumstances of her work environment have left her with a totally disabling psychiatric condition.

The Claimant, Marsha Saracco, was forty-six years old at the time of the hearing. She has a high school education and completed one semester of college. (Tr. 14) From 1972 until 1977, the Claimant worked in a bookkeeping and accounting position. (Tr. 14) Beginning in 1977, the Claimant was employed by Electric Boat Corp., the Employer, at their Quonset Point, Rhode Island, facility. (Tr. 15) This facility constructs submarine hulls and other parts for the U.S. Navy. (Tr. 15)

When the Claimant started at Electric Boat, she served as a weld-support technician, assisting welders in preparation of their tasks. (Tr. 16) However, a number of work-related injuries over the years resulted in physician mandated medical restrictions eventually making it impossible for the Claimant to perform the weld-support position. (Tr. 18-20) Beginning in late 1995 or early 1996, the Employer assigned the Claimant to a light duty position as a tool crib attendant. (Tr. 20) At the hearing, the Claimant explained that at the Quonset Point facility, there are two buildings maintained as tool cribs: the High Bay building and Room 2003. (Tr. 20) These buildings house all of the tools and wire used by employees of Electric Boat in the construction of submarine hulls. (Tr. 23) The primary function of the tool crib attendant is the control, inventory, issuance and receipt of equipment and wire used by other employees in constructing submarine hulls. (Tr. 23) This position also requires that the tool crib employee log all tools and wire issued into a computer system which tracks the scheduled maintenance of such equipment. (Tr. 27) The Claimant further stated that the Quonset Point facility operates a three shift rotation with a half an hour over lap between shifts. (Tr. 17) While employed as a tool crib attendant, the Claimant predominately worked third shift from 11:30 p.m. until 7:30 a.m. (Tr. 16-17)

In her testimony, the Claimant explained that neatness and organization were essential in the tool crib area as the beginning of every shift was extremely chaotic with between twenty-five and ninety workers requiring their equipment for that corresponding shift. (Tr. 22-24, 26, 64) It is also necessary to log each piece of equipment into the computer system before it is issued. (Tr. 27) While more than one tool crib attendant was assigned to each crib facility during the first and second shifts, only one attendant was assigned per crib on the third shift rotation. (Tr. 26) The Claimant's primary duty station was the Room 2003 crib. (Tr. 26) However, she explained that on nights when the attendant of the High Bay

crib was out ill, then she was required to cover issuance of tools, etc., at both buildings. (Tr. 48)

Many of the incidents the Claimant alleges caused or aggravated her psychological condition began with her acquaintance of fellow Electric Boat employee, Mr. Peter Lee. In June of 1999, Mr. Lee was assigned to a one-week third shift training rotation under the Claimant in the Room 2003 tool crib. (Tr. 27-28) The Claimant stated at the hearing that many times during this period Mr. Lee would "disappear" during his training shift and repeatedly ignore her requests to read work-related training materials. (Tr. 29) On a number of occasions, she found him reading science fiction novels and other materials unrelated to work while on duty. (Tr. 29) At the end of the training session, Mr. Lee was assigned to a second shift position at the Room 2003 crib. (Tr. 30)

Due to the thirty minute shift overlap, the Claimant had continued daily interaction with Mr. Lee after his training period ended. (Tr. 30-31) This transition period between shifts allowed the outgoing and incoming tool crib attendants to exchange information necessary to facilitate the subsequent shift. (Tr. 31) However, the Claimant stated that Mr. Lee consistently failed to pass along the information she needed to adequately perform her shift duties. (Tr. 31) Additionally, the Claimant testified that Mr. Lee often left piles of trash cluttering the work area, that he regularly failed to restock the crib at the end of his shift, and that he frequently left the delivery door open in the winter months so that the room would be freezing upon the Claimant's arrival for work. (Tr. 32, 26, 74-75) On another occasion, the Claimant arrived for her shift to find a pornographic magazine left open in plain sight in the tool crib. (Tr. 37)

While the Claimant testified she reported Mr. Lee to her supervisors regarding the messy working conditions and pornographic materials, she was told to "just leave the mess" and "to give the kid a break." (Tr. 36, 38) On her next shift subsequent to reporting the pornographic magazine, the Claimant arrived and found a Coca-Cola bottle filled with what was suspected to be urine. (Tr. 38-39) The Claimant filed a complaint and an incident report was generated by the management. (EX. 1) The incident report and the deposition testimony of Mr. Patrick Johnson, the Claimant's supervisor, indicates that Mr. Lee was working second shift in the Room 2003 crib, the Friday before the bottle was found. (EX. 1, 19)

There were no further shifts that weekend until the beginning of third shift on Sunday, when the Claimant found the bottle. (Ex. 19) While the incident report indicates at least one other person had been let into the crib area over the intervening weekend, the Claimant testified that on such occasions security escorts those individuals. (Tr. 76) The Claimant testified that Mr. Lee's frequent actions upset her and made her job more difficult. (Tr. 37, 74)

Another stressful event the Claimant described was an incident between herself and her supervisor, Mr. Moffit. On this occasion, the Claimant was issuing tools to welders when the computer indicated a particular wrench was due for calibration. (Tr. 43) The Claimant testified that she did not issue the wrench, but offered the welder an alternative wrench instead. (Tr. 42-43) The welder left the crib, but half an hour later, Mr. Moffit called the crib and "chewed her out" for twenty minutes for not issuing the other wrench. (Tr. 43)

On the evenings of December 13 and 14, 1999, the Claimant was required to act as a tool crib attendant at both the High Bay and Room 2003 buildings. (Tr. 48) In addition to her regular duties at both cribs on those nights, on the evening of the 14th, a power shut down at the facility necessitated that all the wire in the heating ovens at the time of the shut down be replaced. (Tr. 47-48) The Claimant stated that this meant replacing approximately four hundred and fifty pounds of wire in a process that takes over two and one half hours to complete. (Tr. 48) While supervisor Johnson lifted the spools of wire from the stock area, the Claimant was solely responsible for loading the ovens. (Tr. 48) She estimated she made between five and six trips between the buildings that night and described the evening as "very hectic." (Tr. 47-48, 49) Sometime after her fourth trip to High Bay, the Claimant began having chest pains, difficulty breathing, and was in great emotional distress. (Tr. 50) Security called the night shift EMT who pulled her from duty until the first shift nurse arrived. (Tr. 51) After a preliminary evaluation, she was sent to see her general practitioner, Dr. Martino. (Tr. 50-52). Dr. Martino, then sent the Claimant to the Kent County Hospital, where she was admitted for observation. (Tr. 50-53, CX. 5)

In addition to the specific stressful incidents enumerated above, the Claimant testified to three general sources of job stress she attributed as the cause of her psychiatric condition. The Claimant stated that work-place accommodations provided for

her physical restrictions were inadequate. Specifically, the Claimant noted that due to her prior injuries, she was unable to lift heavy objects. (Tr. 34) Electric Boat supervisors instructed her to ask non-crib employees who were present in the crib to do any heavy lifting she needed done. (Tr. 34) While generally the Claimant found employees were amenable to assisting her, it was frustrating to her job performance to wait upwards of thirty to forty-five minutes before another employee came to the crib or was otherwise available. (Tr. 34) Additionally, there were some employees who refused to assist her. (Tr. 35)

Secondly, the Claimant testified that she arranged for a handicap parking spot, but found the one provided inadequate. (Tr. 45) The spot was less than fifty feet from the Room 2003 crib, however, most nights some other 2nd shift employee would be in the spot when she arrived for work. (Tr. 67-68) On such evenings she would have to park in a regular employee spot and walk as far as a quarter mile to the building. (Tr. 67-68) The Claimant also stated that there is a distance of approximately one mile between the two tool cribs. (Tr. 44) She was told that on nights where she was responsible for both cribs she could either drive her own car or, if it was available, she may use an Electric Boat flat-bed diesel truck. (Tr. 44) However, the Claimant testified she could not get in and out of the truck without assistance due to her physical restrictions. (Tr. 70)

Finally, the Claimant stated that the overall rowdiness and sometimes sexually harassing nature of her fellow male employees was very stressful. (Tr. 94, 97)

The Claimant testified that her treating family physician is Dr. Martino. (Tr. 52) After the attack she experienced on December 14, 1999, Dr. Martino referred her to psychologist, Dr. Bomberg, who in turn treated her psychiatric conditions along with his colleague, Dr. Singer, a psychiatrist. (Tr. 54-55) The Claimant stated she has taken a number of prescription drugs as part of her treatment and has experienced side effects and reactions to many of them. (Tr. 55-57) She has not worked for Electric Boat since the night of the attack.

After the incident of December 14, 1999, the Claimant states she can no longer be around crowds. (Tr. 57) She gets “panicky” and fears she will have another panic attack unless she gets away from the crowd. (Tr. 57) She stated that she has had panic attacks since December 14, 1999, as often as once every other

week, until she began treatment with Celexa in 2001. (Tr. 57) While she is able to do more things around the house now, she feels she still cannot go out or return to work. (Tr. 58) In fact, the Claimant states she becomes panicked when she even thinks about returning to work. (Tr. 58)

On cross examination, the Claimant stated that both of her parents suffer from medical problems, particularly her father who has advanced Parkinson's Disease. (Tr. 61) However, at the time of the December 14, 1999, attack, both were in good health. (Tr. 61-62) She also testified she is a member of a Renaissance role-playing group that meets regularly and attends Renaissances Fairs in the surrounding areas. (Tr. 83) Despite her condition, she is able to attend monthly meeting of the group and has participated in at least two fairs since the attack. (Tr. 84, 92, 96) She described the December 1999, fair, shortly after her attack at work, as a "total disaster." (Tr. 96) The Claimant also stated she had previously sought psychiatric treatment ten years earlier over problems with her then teenage daughter. (Tr. 62) While she noted she suffers from a number of medical problems, she specifically stated she does not suffer from angina.

The only other witness to testify concerning working conditions and events at the Electric Boat facility involving the Claimant was her supervisor, Patrick Johnson. Mr. Johnson gave a deposition on March 26, 2001. (E. Ex. 19) He stated that no diesel truck was available for transport between the two cribs until late 2000 or early 2001, after the Claimant had left the corporation. (EX. 19) Prior to that a van used by the paint department had been available and he had personally used that van to transport the Claimant between the cribs, including the night of December 14, 1999. (EX. 19) He further testified, the Claimant was a very good, hard worker who knew her job and knew what was required of her to get the job done. (EX. 19)

Mr. Johnson also stated that on at least one or more occasions, the Claimant complained to him about Mr. Lee. On such occasions, she mentioned the trash Mr. Lee left lying around, his incorrect stocking of the tool distribution area, and that he generally did not "work the way she did." (EX. 19) While he never spoke directly to Mr. Lee about the Claimant's concerns, Mr. Johnson stated he did direct the complaints to Mr. Lee's second shift supervisor. (EX. 19)

Mr. Johnson also testified he personally never observed any

of the incidents between Mr. Lee and the Claimant and that the Claimant never spoke to him about finding pornographic materials. (EX. 19) He was also aware of the incident that occurred between the Claimant and Mr. Moffit regarding the torque wrench, however, Mr. Johnson testified the Claimant never mentioned to him that she had been treated in a demeaning manner. (EX. 19)

As to the night of December 14, 1999, Mr. Johnson stated the Claimant seemed "O.K." that night and maybe "a little upset" prior to her attack. (EX. 19) He was later called by the EMT during her attack and when he arrived she did seem very upset and was taking short, struggling-type breaths. (EX. 19)

Medical Evidence:

At the hearing, the Claimant described several past work-related accidents/injuries which resulted in physical restrictions limiting her ability to work. (Tr. 11) Eighteen years ago, while still employed as a weld-support technician, her clothes caught on fire when they came in contact with a heater. (Tr. 11) In trying to escape the crawl space she was in at the time, the Claimant turned a disk in her L-5 vertebrae, dislocated her right shoulder, and disturbed three disks in her neck. (Tr. 18) She was given two weeks workman's compensation benefits and returned to work. (Tr. 18) The Claimant also stated she had had a number of unreported slip and fall injuries at work. (Tr. 18) A second major injury occurred when a nail became lodged in her knee cap. (Tr. 19) The Claimant was off for sixteen weeks after falling into a hole and injuring her knee, rotator cuff, shoulder, and neck. (Tr. 19) Treatment of many of these injuries is documented in the Kent County Hospital records offered by the Claimant. (CX. 5) While these injuries are not the subject of this claim, I note them for the sake of completeness.

The Claimant's primary care physician is Dr. Martino. Included in the record is the Claimant's entire medical history file from Dr. Martino's office. (CX. 1) The majority of the documents in this exhibit relate to diagnosis and treatment of medical conditions having no bearing on this claim. Also, many of the records are either illegible or photo copies of such poor quality that they are unreadable. Of significance, however, is that no report in this exhibit documents treatment of the Claimant for depression or any other specific mental condition prior to December 14, 1999. (CX.1) A report of December 6,

1999, indicates the Claimant complained of mood swings and Dr. Martino prescribed Wellbutrin.(CX. 1) On December 14th, Dr. Martino examined the Claimant in her office and then sent her to Kent County Hospital for further treatment. She was examined in Dr. Martino's office again on December 16, 1999, where she was diagnosed as suffering from chest pain and anxiety. (CX. 1) Records of office visits over the next few year indicate treatment for an anxiety disorder and depression and also note that the Claimant has a chemical sensitivity problem. (CX. 1)

The Kent County Hospital records from December 14, 1999, are also included in the record. (EX. 3, CX. 5) The Claimant was initially treated by Dr. Wyllie upon admission to the emergency room. (EX. 3, CX. 5) Dr. Wyllie made a preliminary diagnosis of onset chest pain. (EX. 3, CX. 5) His final diagnosis after further examination and testing, was unstable angina. (Ex. 3, CX. 5) The Claimant was admitted to the hospital for observation and further testing. (EX. 3, CX. 5)

After the attack of December 14, 1999, Dr. Martino referred the Claimant to psychologist, Dr. Bromberg. (CX. 1) The record documents thirty-two visits with the Claimant from January 2000 to February 2001. (EX. 5-12, CX. 3) The treatment notes from these various visits document numerous sources of stress in the Claimant's life including work-related stressors, family induced stressors, and incidents of past physical and sexual abuse. (EX. 5-12, CX. 3) Work related stress included her personal problems with Mr. Lee who she discussed at length in many sessions and harassment by male co-workers. (EX. 5-12, CX. 3) There are also notations recounting conversations about her past physical abuse, sexual abuse, former problems with her daughter when the daughter was a teenager, and the concern she felt for her aging and ill parents. (Ex. 5-12, CX. 3) In his initial assessment of the Claimant on January 7, 2000, Dr. Bromberg's notes indicate the Claimant had been feeling more emotional over the preceding few months. (CX. 3)

In his deposition testimony of February 5, 2001[2], Dr. Bromberg stated that the Claimant presented to him initially with symptoms of depression and anxiety that the Claimant reported began in November 1999. (CX.3) She described her

[2] The deposition, including cross examination continued on February 21, 2001.

primary recent stressors, including her acute stressors, as work-related incidents and events. (CX. 3) Dr. Bromberg testified that the interpersonal stress of work, combined with a feeling of being limited in her ability to physically do her job, triggered the Claimant's panic attack. (CX. 3) As part of her treatment, Dr. Bromberg referred the Claimant to psychiatrist, Dr. Singer. (EX. 5, CX. 3) Together, and after multiple visits with both, Drs. Bromberg and Singer diagnosed the Claimant with "Major depressive disorder and panic attack with agoraphobia." (CX. 3) Furthermore, Dr. Bromberg testified that the Claimant was disabled due to her psychiatric condition and unable to return to her previous job. (CX. 3) It was his opinion that the work-related stress of her job at Electric Boat either caused or aggravate her psychological condition. (CX. 3)

In his progress notes, Dr. Bromberg notes that the Claimant suffers from angina. (EX. 5, CX. 3) However, in his deposition, he explained that he felt the Claimant does not suffer from angina, but from panic attacks. (CX. 3) While the symptoms of both conditions are similar, tightness in the chest, shortness of breath, etc., there is a distinction between the two conditions in relation to the context in which they occur. (CX. 3) Dr. Bromberg further discussed that in addition to chest pain, the Claimant demonstrated other symptoms of panic attacks including avoidance of stressful stimuli and anxiety about having an attack. (CX. 3) It was his professional opinion that the Claimant suffered from a work-related, disabling psychiatric condition. (CX. 3) He stated that the primary stressor causing this disorder was her job, which she discussed at length in many of their sessions. (CX. 3, EX. 5-12) Other sources of stress included her parents poor health and her past physical and sexual abuse. (CX. 3) However, Dr. Bromberg opined that the work-related stress "trigger[ed] her panic attacks." (CX. 3)

The Claimant was also treated by psychiatrist, Dr. Singer from January 2000 until January 2001. (CX. 2, EX. 13-17) The record includes the progress notes from the various visits in which Dr. Singer documents multiple stressors, including work-related stress, personal stress, and past physical and sexual abuse. (CX. 2, EX. 13-17).

In his deposition of March 3, 2001, Dr. Singer states that he first examined the Claimant on January 31, 2001. (CX. 2) The history taken on the first visit reveals work-related stressors, symptoms of panic, general anxiety and depression, and frustration over her husband's medical problems. (CX. 2) Dr.

Singer testified that he was "not certain" whether the Claimant suffered from angina during the course of his treatment of the Claimant. (CX. 2) He did state, however, that symptoms of angina and panic attacks are similar. (CX. 2) In rating her stressors, Dr. Singer opined that the Claimant's primary stressor was work-related and her secondary stressor was her parents failing health. (CX. 2)

On the initial visit, Dr. Singer diagnosed the Claimant with panic disorder with agoraphobia, anxiety not otherwise specified, and major depressive disorder. (CX.2) He explained that agoraphobia is a fear of having panic attacks and avoidance of situations that the patient fears may trigger such an attack. (CX. 2) The diagnosis was based upon Dr. Martino's report of the December 14, 1999, panic attack and an inventory of the Claimant's symptoms. (CX. 2)

After a course of twenty-four visits, Dr. Singer, along with Dr. Bromberg, revised their diagnosis to "multi factorial stress." (CX. 2) Dr. Singer felt the patient was significantly affected by a number of stressors, including work-related and non work-related factors. (CX. 2) Dr. Singer opined that the Claimant did have a panic attack on December 14, 1999, and that the situation provoking that attack was a hostile work environment. (CX. 2) He further felt she is unable to return to work at this time due to her condition and this present inability to return to work is still related to the work environment she left. (CX. 2)

The Claimant was also examined by psychiatrist Dr. Harrop on April 12, 2000. (EX.4) Dr. Harrop diagnosed the Claimant as suffering from a major depressive episode with melancholic features. (EX. 4) He stated that she began suffering her mood swings and sleeping problems in August, 1999. (EX. 4) He found the Claimant to be disabled due to her psychiatric condition, however, he felt that this condition was not work related. In his report, he states that "the fact the panic attack happened at work was a coincidence." (EX. 4)

Dr. Harrop was deposed on March 31, 2001. (EX. 18, CX. 4) At that time, Dr. Harrop stated he did not diagnosis the Claimant with panic attacks because she had not suffered enough attacks to qualify her for that diagnosis. (EX. 18, CX. 4) She reported to him the major attack of December 14, 1999, and two per month since then. (EX. 18, CX. 4) The fact the attack occurred at work was not significant in Dr. Harrop's opinion and

only demonstrated a symptom of the Claimant's depression. (EX. 18, CX. 4) The cause of that depression he attributed to a variety of situational problems including the physical abuse she endured as a child, her ill parents, her chemical sensitivity problem, unhappiness with the accommodations made for her physical disabilities at her job, and difficulty with a fellow employee. (EX. 18, CX. 4) He felt these situations had overwhelmed the Claimant and caused a major depressive episode.

Injury Arising Out of the Course of Employment:

The initial question to be resolved is whether Marsha Saracco sustained an injury on December 14, 1999, that entitles her to benefits under the Act. Unquestionably, Ms. Saracco suffers from a disabling psychological injury. The critical question regarding her disabling condition is whether it was caused or aggravated by the December 14, 1999, work-related incident, and/or whether it was caused or aggravated by cumulative job-related stressors.

An "Injury" is defined in Section 2(2) of the Act in pertinent part as an "accidental injury. . . arising out of or in the course of employment." 33 U.S.C. 902(2). The claimant must initially establish a *prima facie* case that she suffered an injury. To do so, she must show she suffered an injury and, that either a work-related accident occurred or that working conditions existed which could have cause or aggravated that injury. Kelaita v. Triple Machine Shop, 13 BRBS 326, 330-331 (1981) See also Cairns v. Matson Terminals, Inc., 21 BRBS 252 (1988); Stevens v. Tacoma Boatbuilding Co., 23 BRBS 191 (1990); Perry v. Carolina Shipping Co., 20 BRBS 90 (1987)

If a *prima facie* case of injury is established, the claimant is aided by a presumption pursuant to Section 20 of the Act that the "injury arose out of and in the course of employment." Kelaita, *supra* at 329-331; See also Wheatley v. Alder, 407 F.2d 307, 312 (D.C. Cir. 1968). The burden then shifts to the employer to produce "substantial evidence to rebut the work-relatedness of the injury." Volpe v. Northeast Marine Terminals, Inc., 671 F.2d 697, 700 (2nd Cir. 1982), *citing* Del Velcchio v. Bowers, 296 U.S. 280, 285 (1935). In this context, "Substantial evidence" has been considered to be "specific and comprehensive evidence sufficient to sever the potential connection between the injury and the employment." Swinton v. J. Frank Kelly, Inc., 554 F.2d 1075, 1083 (D.C. Cir. 1976),

*cert. denied* 429 U.S. 820 (1976). After the presumption has been rebutted, the competent evidence must be considered as a whole to determine whether an injury has been established under the Act. *Id.*; *Volpe*, 671 F.2d 700; Cairns, 21 BRBS 252 at 254.

It has long been established that work related psychological impairments are compensable under the Act. Sanders v. Alabama Dry Dock & Shipbuilding Co., 22 BRBS 340 (1989); Turner v. Chesapeake and Potomac Telephone Co., 16 BRBS 255 (1984). Furthermore, the §20(a)presumption is available to Claimant's alleging a psychological injury. Cotton v. Newport News Shipbuilding & Dry Dock Co., 23 BRBS 380, 384 N.2 (1990). In such cases, the Claimant's psychological injury need only be due in part to work-related conditions to be compensable. Peterson v. General Dynamics Corp., 25 BRBS 78 (1991) *aff'd sub nom* Ins. Co. of North America v. U.S. Department of Labor, OWCP, 969 F.2d 1400, 26 BRBS 14 (CRT) (2nd Cir. 1992) *cert. denied*, 507 U.S. 909 (1993) The 20(a) presumption permits a Claimant to recover for a psychological injury where the stress endured was relatively mild. Konno v. Young Brothers, Ltd., 28 BRBS 57, 61 (1994). Claimants are not required to show unusually stressful working conditions in establishing a *prima facie* case. Id. In assessing whether the *prima facie* case has been established, the Board has previously held that it is not the magnitude of the stress which is evaluated, but the effects the stressful incidents had on the particular claimant. Cairns, 21 BRBS 252.

Additionally, if an employment-related injury contributes to, combine with, or aggravates a pre-existing disease or underlying condition, the entire resultant disability is compensable. Independent Stevedore Co. v. O'Leary, 357 F.2d 812(9th Cir. 1966); Rajotte v. General Dynamics Corp., 18 BRBS 85 (1986). Also, when a claimant sustains an injury at work which is followed by the occurrence of a subsequent injury or aggravation outside work, the employer is liable for the entire disability if that subsequent injury is the natural, unavoidable result of the initial work injury. Bludworth Shipyard v. Lira, 700 F.2d 1046, 15 BRBS 120 (CRT) (5th Cir. 1983); Hicks v. Pacific Marine & Supply Co., 14 BRBS 549 (1981).

Turning to the case at hand, there is medical evidence in the record which supports a finding that the Claimant indeed suffers from a psychological condition. Every doctor and psychologist who examined the Claimant diagnosed her as having some form of mental illness. (EX. 4, 18, CX. 1, 2, 3, 4)

Furthermore, every physician and psychologist of record determined that she is presently unable to return to work due to a psychological illness. (Id.) Reviewing this evidence, I find that the Claimant has satisfied the injury prong of her *prima facie* case.

As to the second prong of her *prima facie* case, I also find that the Claimant has established that a work-related accident or conditions existed which caused or aggravated her injury. As stated by the Board in Konno and Cairns, in the case of psychological injury under the Act, the measure of the stress endured by the Claimant need not be extreme. The lay testimony of the Claimant and the medical evidence of record reveals that at the time the Claimant's psychological condition arose, she was under a number of work-related and non-work related stressors. The work-related stressor include the incidents arising out of her work relationship with Peter Lee, inadequate accommodations made for disabilities, and the overall stressful nature of her position. Non-work related stressor include her parents' poor health and incidents of past physical and sexual abuse. Based upon the Claimant's testimony, the deposition testimony and medical records of Drs. Singer and Bromberg, I conclude that the cumulative effects of the Claimant's general working conditions combined with the actions of Mr. Lee and and the lack of accommodations made for the Claimant's physical disabilities constituted employment conditions sufficient to invoke the presumption.

In finding the presumption invoked, I rely primarily on the testimony of Drs. Singer and Bromberg who both specifically determined that the December 14, 1999, panic attack suffered by the Claimant was triggered by work related incidents. (CX. 2, 3) Both Drs. Singer and Bromberg examined the Claimant on numerous occasions over the course of a year, giving them great insight into the events forming the underpinning of the Claimant's condition. While Dr. Singer's refined diagnosis of the Claimant's condition was "multi factorial stress," many of the factors he attributed to causing this condition were work-related stressors. (CX. 2)

Dr. Harrop, on the other hand, opined that the fact the panic attack of December 14, 1999, occurred at work was just a coincidence. However, I note, that unlike Drs. Bromberg and Singer, Dr. Harrop only examined the Claimant on one occasion. While he did not determine the Claimant suffered from panic attacks, he did state that the Claimant suffered from depression

resulting from a variety of situational problems. (EX. 18. CX. 4) Specifically, he noted two work-related stressors contributing to that depression. (EX. 18, CX. 4)

I also rely on the Claimant's testimony and the deposition testimony of Patrick Johnson in finding the presumption invoked. It is clear from the testimony of both, that the Claimant was a conscientious and hard working employee. It is also clear that she was upset and frustrated in her own job performance by the actions of Mr. Lee, by the events of the night of December 14, 1999, and by the lack of accommodations made for her by Electric Boat. The testimony of Mr. Johnson regarding complaints made to him about Mr. Lee documents part of this frustration. I find the overall effect of the stressors endured by the Claimant, as established in her own testimony and the deposition testimony of Mr. Johnson, sufficient to warrant a finding that requirements of the presumption are satisfied. Furthermore, I find that the medical evidence of record establishes that the Claimant's psychological injury was at least aggravated by work-related stressors, if in fact these stressors did not cause her psychological injury.

Once the Claimant has availed herself of the presumption, the burden then shifts to the Employer to rebut the presumption with substantial evidence. The Board has held that the Section 20(a) presumption may be rebutted with evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event. Swinton v. J. Frank Kelly, Inc., 554 F.2d 1075, 1083 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). Thus, the relevant inquiry is whether the Employer's evidence can establish the lack of a causal connection between the Claimant's condition and his employment. Dower v. General Dynamics Corp., 14 BRBS 324 (1981).

Upon reviewing the evidence offered by the Employer, I do not find it sufficient to break the connection between the Claimant's disabling condition and the December 14, 1999, panic attack. The Employer, in arguing that the causation connection is broken, relies on a number of arguments that I find neither independently nor cumulatively adequate to rebut the presumption.

The Employer first argues that the December 14, 1999, incident requiring hospitalization of the Claimant was not a panic attack at all, but unstable angina. Dr. Wyllie, who

treated the Claimant in the Kent County Hospital Emergency Room, in fact made that diagnosis. (EX. 3, CX. 5) Both Drs. Bromberg and Singer explained in their depositions that angina is a medical condition, the chief symptom of being chest pain. (CX. 2, 3) However, they also explained that symptoms produced by both angina and panic attacks are similar. (CX. 2, 3) While Dr. Singer stated in his deposition he was unsure whether the Claimant had ever been diagnosed with angina, he still opined she was suffering from panic attacks. (CX. 2) Furthermore, Dr. Bromberg who knew of and had documented the diagnosis of angina, also concluded that the Claimant suffered from panic attacks as opposed to angina. (CX. 3) I also note that Dr. Martino, the only other physician of record besides Dr. Wyllie to treat the Claimant personally on the day of the attack, records the Claimant's symptoms on that day simply as "chest pain." (CX. 1) In visits subsequent to the December 14, 1999, attack, Dr. Martino diagnosis chest pain and anxiety and eventually denotes only anxiety and a depressive disorder. Furthermore, the Employer's own examining physician, Dr. Harrop, stated in his deposition that the Claimant had suffered a panic attack, although he disagrees with Drs. Bromberg and Singer as to the cause of the attack. (EX. 18, CX. 4) Examining the medical evidence regarding a diagnosis of angina, I find that it insufficient to rebut the 20 (a) presumption.

The Employer next avers the December 14, 1999, attack was a result of an allergic reaction to the drug Wellbutrin. It is clearly documented through out the medical evidence that the Claimant suffers from a chemical sensitivity problem. Dr. Harrop explained in his deposition that a chemical sensitivity problem is a condition where by patients develop intolerances to certain chemicals. (EX. 18) I note that none of the medical evidence in the record indicates that the attack of December 14, 1999, was caused by or contributed to by the drug Wellbutrin. While the Claimant did state to the EMT the day of the attack that she had begun taking the drug that morning and she felt it caused her attack, there is not a scintilla of documented medical evidence which affirmatively proves Wellbutrin precipitated the attack. In fact, the medical evidence shows that the Claimant continued to take Wellbutrin as part of her treatment with Drs. Singer and Bromberg. Once again, I find this argument insufficient to overcome the 20(a) presumption.

Thirdly, the Employer alleges that the attack of December 14, 1999, was not the result of work-related stress, but was caused by a number of non-work related stressors in the

Claimant's life. As grounds, the Employer initially notes the Claimant's statement to medical personnel on the day of the attack that "this has occurred before." (EX. 2) Next, the Employer points to panic attacks and anxiety producing events occurring subsequent to the Claimant's last day of employment with Electric Boat. (EX. 10, 15) These non-job related stressors endured by Claimant prior to, contemporaneously with, and subsequent to the December 14, 1999, attack, it is argued, are the actual source of the Claimant's condition. As evidence, the Employer offers the medical reports, notes and depositions of Drs. Singer, Bromberg, and Harrop which all document numerous sources of stress in the Claimant's life. (EX. 5-18; CX. 2, 3, 4)

Even if the non-work related stressors in fact caused, the Claimant's psychological condition, the presumption is not rebutted. The Employer has failed to offer any evidence that the work-related stressors did not aggravate an existing condition of the Claimant. Rajotte v. General Dynamics Corp., 18 BRBS 85 (1986); LaPlante v. General Dynamics Corp./Elec. Boat Div., 15 BRBS 83 (1982); Seaman v. Jacksonville Shipyards, 14 BRBS 148.9 (1981). See Hensley v. Washington Metro. Area Transit Auth., 655 F.2d 264, 13 BRBS 182 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 904 (1982), *rev'g* 11 BRBS 468 (1979) (employer must establish that aggravation did not arise even in part from employment).

As noted above, both Drs. Singer and Bromberg conclude that the primary stressors in the Claimant's life were work-related stressors. (CX. 2, 3) Furthermore, both Drs. Singer and Bromberg determined that it was indeed these work-related stressors which led to her panic attack on December 14, 1999, and her subsequent psychological condition. (CX. 2, 3) Only Dr. Harrop determined that the location of the attack was coincidental to the events which triggered it. (EX. 4)

I reiterate that Dr. Harrop only had the opportunity to examine the Claimant on one occasion. Furthermore, I note that both Drs. Bromberg and Singer vehemently disagreed with Dr. Harrop's conclusion regarding what triggered the attack. (CX. 2, 3) Dr. Harrop also enumerates in his deposition five sources of stress that were affecting the Claimant at the time of his examination. (CX. 18) Two of these sources continued to be work-related incidents and general work environmental factors, despite the fact the examination occurred almost five months after the Claimant's last day of employment. Given this last

fact, I find Dr. Harrop's opinion that the fact the attack happened at work a coincidence, an equivocal statement and entitled to little weight. Highly equivocal evidence is not substantial and will not rebut the presumption. Dewberry v. Southern Stevedoring Corp., 7 BRBS 322 (1977), *aff'd mem.*, 590 F.2d 331, 9 BRBS 436 (4th Cir. 1978).

As a result of the forgoing, I find that the evidence offered by the Employer in this case is insufficient to rebut the presumption of compensability found at §20(a). Therefore, I find that the Claimant suffered a compensable injury, the consequences of which presently continue, while working for the Employer.

Nature and Extent of the Injury/Disability:

Disability under the Act is defined as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). The employee has the initial burden of proving total disability, as well as the burden of proving that the disability is permanent. Eckley v. Fibrex and Shipping Co., 21 BRBS 120 (1988). To establish a *prima facie* case of total disability, the Claimant must prove, by a preponderance of the evidence, that she cannot return to her regular or usual employment due to his work related injury. The Claimant need not establish that she cannot return to any employment, rather only that she cannot return to her usual employment. Elliot v. C & P Tel. Co., 16 BRBS 89 (1984). If the Claimant satisfies this burden, she is presumed to be totally disabled. Walker v. Sun Shipbuilding & Dry Dock Co. (Walker II), 19 BRBS 171 (1986).

The standards for determining total disability are the same regardless of whether temporary or permanent disability is claimed. Bell v. Volpe/Head Construction Co., 11 BRBS 377 (1979). The Act defines disability in terms of both medical and economic considerations. Avondale Shipyards, Inc. v. Guidry, 967 F.2d 1039 (5th Cir. 1992). The degree of the Claimant's disability, i.e. total or partial, is determined not only on the basis of physical condition, but also on other factors, such as age, education, employment history, rehabilitative potential and the availability of work. Thus, it is possible under the Act for a Claimant to be deemed totally disabled even though she may be physically capable of performing certain kinds of employment. New Orleans (Gulfwide) Stevedore v.

Turner, 661 F.2d 1031, 1038 (5th Cir. 1981).

Upon review of the medical evidence, which is discussed in detail above, I find that the preponderance of such evidence clearly proves that the Claimant suffers from a psychological condition caused, at least in part by, work-related stress she endured while an employee of Electric Boat Corporation and that she is totally disabled due to this condition. The Employer argues that the work-related stressors endured by the Claimant do not establish adequate causes for the Claimant's stress and disability. Specifically, the Employer analyzes each stressor affecting the Claimant at the time of the panic attack on December 14, 1999, and states that these stressors would not cause a psychological condition, such as the Claimant's, in an average person. I find the Employer's argument fails for two reasons.

Firstly, the bulk of the medical evidence in this case supports a finding that the Claimant's mental illness is a direct result of the distressing conditions she encountered while employed at Electric Boat. In this regard, I rely primarily on the depositions and medical reports of Dr. Singer and Bromberg for the reasons enumerated above. Furthermore, the medical evidence points to the conclusion that the Claimant's current condition would preclude her engagement in active employment. Every physician and psychologist of record determined that she was presently unable to return to work. (EX. 4, 18, CX. 2, 3)

Secondly, I find that aggregate of incidents and events troubling the Claimant during her employment were enough to cause her psychological condition. While independently these stressors may not be of sufficient caliber to cause psychological problems, when endured cumulatively they are distressing enough, in my opinion, to have caused the Claimant's illness.

The Employer also argues that this claim for benefits should fail because the Claimant is not a credible witness. It is solely within the judge's discretion to accept or reject all or any part of any testimony, according to his judgment. Perini Corp. v. Hyde, 306 F. Supp. 1321, 1327 (D.R.I. 1969). The Board will not interfere with credibility determinations made by an administrative law judge unless they are "inherently incredible and patently unreasonable." Cordero v. Triple A Machine Shop, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert.*

*denied*, 440 U.S. 911 (1979); Phillips v. California Stevedore & Ballast Co., 9 BRBS 13 (1978).

Reviewing the testimony given by the Claimant, I find her to be a credible witness. While I note some minor inconsistences between the testimony of the Claimant and the deposition testimony of Patrick Johnson, I do not find those inconsistences so remarkable as to warrant discrediting either individual.

Because the Claimant has established a *prima facie* case of total disability, the burden shifts to the employer to rebut this finding. To establish rebuttal, the Employer must show suitable alternative employment for the Claimant. Clophus v. Amoso Prod. Co., 21 BRBS 261 (1988) Failure to prove suitable alternative employment results in a finding of total disability. Manigault v. Stevens Shipping Co., 22 BRBS 332 (1989). In the present case, no evidence of suitable alternative employment has been offered by the Employer. Therefore, I find that the Employer has failed to rebut my finding that the Claimant is totally disabled.

Concerning the nature of the Claimant's disability, it is also the Claimant's burden to prove that her injury is permanent. Any disability suffered by Claimant before reaching maximum medical improvement is considered temporary in nature. Berkstresser v. Washington Metropolitan Area Transit Authority, 16 BRBS 231 (1984). As no evidence of maximum medical improvement has been offered in this case, I find that the Claimant is entitled only to temporary total disability benefits under the Act.

Entitlement:

The evidence in the record supports the conclusion that Marsha Saracco was temporarily totally disabled as a result of a panic attack on December 14, 1999, and psychological condition caused by her working environment. Drs. Singer and Bromberg indeed determined that she suffers from a psychological condition due to her work environment. All physicians and psychologists of record find her unable to return to work at this time. The parties have stipulated to an average weekly wage of $835.00. I therefore find that the Claimant is entitled to temporary total disability compensation under Section 8(b) of the Act from December 14, 1999, and continuing in the amount of $556.67 per week which is 66-2/3 percent of the Claimant's

average weekly wage of $835.00. I further find that Ms. Saracco is entitled to reimbursement for past medical expenses incurred for treatment of her psychological condition resulting from the December 14, 1999, panic attack. Also, the Claimant is entitled under Section 7 of the Act to future medical expenses incurred as a result of her job-related injury.

Attorney's Fees and Expenses:

A verified motion for attorney's fees was received in this matter from Claimant's counsel on June 12, 2001. An objection to the amount claimed was received from the Employer's counsel on June 25, 2001. A separate order addressing the objections and determining the amount of attorney's fees in this case will follow.

**ORDER:**

Based on the Findings of Fact and Conclusions of Law expressed herein, IT IS HEREBY ORDERED that:

1. The Employer shall pay the Claimant compensation for temporary total disability in the amount of $556.67, from December 14, 1999 and continuing, based on Claimant's average weekly wage of $835.00, in accordance with the provisions of Section 8(b) of the Act. 33 U.S.C. § 908(b).

2. The Employer shall pay all reasonable, appropriate and necessary medical expenses arising from the Claimant's December 14, 1999, work injury, pursuant to the provisions of Section 7 of the Act.

3. The Employer shall pay interest on any sums determined to be due and owing at the rate provided by 28 U.S.C. § 1961 (1982); Grant v. Portland Stevedoring Co., et al., 16 BRBS 267 (1984).

A
DANIEL J. ROKETENETZ
Administrative Law Judge